

MINUTES
BOARD OF ADJUSTMENT
PUBLIC HEARING
JUNE 8, 2006

The Lake County Board of Adjustment met Thursday, June 8, 2006 in the Commission Chambers on the second floor of the Round Administration Building in Tavares, Florida to consider requests for variances and any other petitions that may be submitted in accordance with Chapter XIV of the Lake County Land Development Regulations.

Board Members Present:

Howard (Bob) Fox, Jr.
Darren Eslinger
Ruth Gray
Mary Link Bennett
Donald Schreiner, Chairman
Carl Ludecke

Board Members Not Present:

Henry Wolsmann, Vice Chairman

Staff Present:

Terrie Diesbourg, Director, Customer Services Division
Anita Greiner, Senior Planner, Customer Services Division
Anna Ely, Public Hearing Coordinator, Customer Services Division
Melanie Marsh, Deputy County Attorney

Chairman Schreiner called the meeting to order at 1 p.m. He stated that if a variance is approved, the owner/applicant should give staff at least 24 hours before proceeding to the zoning counter. He confirmed Proof of Publication for each case as shown on the monitor.

Anita Greiner, Senior Planner, asked that Agenda #4, BOA#65-06-1, be removed from the consent agenda and placed on the regular agenda.

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CASE NO.: BOA#62-06-5
OWNER/APPLICANT: David W. Bates

AGENDA NO.: 1

CASE NO.: BOA#71-06-4
OWNER/APPLICANT: Shukan, LLC

AGENDA NO.: 10

There was no one present in the audience to represent or to speak on either of these cases.

MOTION by Mary Link Bennett, SECONDED by Carl Ludecke to accept the withdrawal of BOA#62-06-5 and BOA#71-06-4.

FOR: Fox, Jr., Eslinger, Bennett, Schreiner, Ludecke

AGAINST: None

NOT PRESENT: Wolsmann, Gray

MOTION CARRIED: 5-0

Minutes

MOTION by Mary Link Bennett, SECONDED by Howard (Bob) Fox, Jr. to approve the May 11, 2006 Board of Adjustment Public Hearing minutes, as submitted.

FOR: Fox, Jr., Eslinger, Bennett, Schreiner, Ludecke

AGAINST: None

NOT PRESENT: Wolsmann, Gray

MOTION CARRIED: 5-0

Discussion of Consent Agenda

Chairman Schreiner explained the procedure for hearing the cases on the consent agenda.

There was no one on the Board nor anyone in the audience who had an objection to the following cases remaining on the consent agenda: BOA#66-06-4, BOA#68-06-5, BOA#72-06-3, and BOA#73-06-4. A member of the audience asked that Agenda #9, BOA#70-06-3, be removed from the consent agenda and placed on the regular agenda.

Consent Agenda Approval

CASE NO.:	BOA#66-06-4	AGENDA NO.:	5
OWNERS/APPLICANTS:	Karl E. and Brenda G. Jung		
CASE NO.:	BOA#68-06-5	AGENDA NO.:	7
OWNERS:	Jerry and Phoebe Venable		
APPLICANT:	Sheryl Kimberly (Kim) Carter		
CASE NO.:	BOA#72-06-3	AGENDA NO.:	11
OWNER/APPLICANT:	Dawn Rambo		
CASE NO.:	BOA#73-06-4	AGENDA NO.:	12
OWNER/APPLICANT:	Jodi H. Ogden		

Ruth Gray came into the meeting.

MOTION by Mary Link Bennett, SECONDED by Carl Ludecke to take the following actions on the above consent agenda:

BOA#66-06-4	Approval with conditions
BOA#68-06-5	Approval
BOA#72-06-3	Approval
BOA#73-06-4	Approval

FOR: Fox, Jr., Eslinger, Gray, Bennett, Schreiner, Ludecke

AGAINST: None

NOT PRESENT: Wolsmann

MOTION CARRIED: 6-0

CASE NO.:

BOA#63-06-3

AGENDA NO.:

2

OWNERS/APPLICANTS:

Craig Cain and John G. Walker

Anita Greiner, Senior Planner, presented the case and staff recommendation of approval. She showed the aerial and site plan from the staff report on the monitor. She referred to a letter of opposition in the backup that had been received. She submitted a flood map as County Exhibit A and a wetlands map as County Exhibit B. She added that the writer of the letter of opposition lives on the parcel to the south of the subject parcel and submitted a map showing those two parcels (County Exhibit C).

When Carl Ludecke asked if this building could be moved, Ms. Greiner said that is something he would need to ask the owners. She did not know how the building was constructed. The County does not have any building permit plans as the owners have not yet applied for the permit due to the need for this variance. Chairman Schreiner said it appears from the photographs that it is stick-built with a shingled roof.

Craig Cain was present to represent the case. In response to Mr. Ludecke, Mr. Cain said the building has a wood floor setting on cinder blocks. Mr. Ludecke felt the building should be moved. Mr. Cain added that the roof is supported by four by fours on each end that are used to support the trusses. The building is 20 feet by 20 feet. It is used to keep the feed supplies and farming equipment out of the weather until they could get the place ready to go. The trusses they bought were for a 25-foot building so there is some overhang. The four by fours were sunk in the ground and concreted in to help support the end of the structure on the roof. They have plans for the building and submitted them to an engineer. In the meantime, he filed for an agricultural exemption as he had cattle on the property by the end of the year. He was not aware of the 25-foot setback requirement. When he purchased the property, he was told that it had an agricultural exemption and that he could build a structure for the purposes of a ranch or working farm. A permit would not be required. He was not trying to do anything wrong; he just did not research the matter to the extent he should have.

When Darren Eslinger asked if there were stamped plans, Mr. Cain said the architectural engineers had them for about 2-1/2 months and then told him that they did not have time to review them. He has been in contact with the Code Enforcement Division. He would like to be able to save the building, but he took full responsibility for not following the correct process.

Mr. Eslinger asked Ms. Greiner if the County knows if this structure meets building requirements. Ms. Greiner said the County will not know until building plans are submitted.

When Chairman Schreiner asked if approving this variance would clear the way for Mr. Cain to apply for a building permit, Ms. Greiner said it would. Once the building permit was obtained, Chairman Schreiner confirmed that there would be the routine inspections to ensure the existing structure meets all Code requirements at the time of the inspection.

Etta Mason, adjacent property owner, was concerned about this building being 12 feet from her property line. She questioned whether it would devalue her property. When her husband built a barn on their property, he followed the proper procedures and paid all the required fees. She felt the owners should abide by the rules. At the request of Mr. Ludecke, Ms. Greiner pointed out the pine tree groves on Ms. Mason's property. Ms. Mason said she did not understand why the building was placed so close to her property when there is so much acreage behind the house.

MOTION by Carl Ludecke, SECONDED by Mary Link Bennett to deny the variance request in BOA#63-06-3.

Ruth Gray said she did not see any big problem with this request. Mr. Ludecke replied that one of the purposes of agricultural setbacks is to protect adjacent property owners from odor problems. When Ms. Gray asked if the building would contain noxious items, Mr. Ludecke said it is not known what is currently housed in the building or what could be housed there in the future. Ms. Greiner said that if the building

CASE NO.: BOA#63-06-3 AGENDA NO.: 2

OWNERS/APPLICANTS: Craig Cain and John G. Walker **PAGE NO.:** 2

was to house animals, she would have definitely recommended denial, but this building is not to be used for that purpose. That could be added as a condition.

FOR: Bennett, Ludecke

AGAINST: Fox, Jr., Eslinger, Gray, Schreiner

NOT PRESENT: **Wolsmann**

MOTION FAILED: 2-4

MOTION by Ruth Gray, SECONDED by Darren Eslinger to approve the variance request in BOA#63-06-3 with the condition that no animals may be housed in the detached garage/storage building.

In response to Mr. Ludecke, Ms. Greiner said the only time drainage requirements are considered is if the property is near wetlands, which this property is not.

FOR: Fox, Jr., Eslinger, Gray, Schreiner

AGAINST: Bennett, Ludecke

NOT PRESENT: **Wolsmann**

MOTION CARRIED: 4-2

CASE NO.:

BOA#64-06-5

AGENDA NO.:

3

OWNERS/APPLICANTS:

David W. and Phyllis A. Smith

Anita Greiner, Senior Planner, presented the case and staff recommendation of denial. She showed the aerial and photographs from the staff report, noting that the second structure is almost complete. She submitted a boundary survey as County Exhibit A. In response to Carl Ludecke, Ms. Greiner explained that the Smiths want to move into the house built for their son and sell the larger house they currently live in. Ms. Bennett asked the difference in square footage between the two houses. Ms. Greiner said the new house is 3,037 square feet under roof. The total square footage of the house the Smiths are currently living in is 3,600. Ms. Greiner explained to Ruth Gray that the health condition of Ms. Smith is their hardship.

David Smith, Sr. and his wife, Phyllis, were present to represent the case. He explained that the living area in the newly constructed house is only 2,000 square feet. It is much smaller than the house they are living in. The new house has an oversized garage, which contributes to the 3,000 total square feet. He noted that he had submitted four letters from different doctors regarding Ms. Smith's health. The original plan was for them to live in the smaller house, and the son and his fiancée would live in the larger house the parents now live in. The parents do not want the larger house because of Ms. Smith's health condition. However, his son and his fiancée have split up. He said they would like to sell the larger house and pay off the mortgage so they can move into the smaller home and he can care for his wife. He and his wife would not be moving into the smaller house until September. Mr. Smith agreed with Darren Eslinger that they soon would be carrying two mortgages. Ms. Bennett asked if the son had applied for a mortgage to build this structure. Mr. Smith said he had not. He and his wife applied for the mortgage. Mr. Smith said his wife will be using a wheelchair soon.

Ruth DeGaglia, adjacent property owner, said she has lived north of the subject property since 1972. Ms. Greiner pointed out Ms. DeGaglia's property on the aerial. Ms. DeGaglia said she also did a family density exception with three of her children. The intent of such a lot split is to allow family members to live near each other and support one another. The intent was not to sell the other piece of property. She felt the five-year requirement should be followed. She also questioned the new motor house on the property if the hardship is so bad. She had heard that Mr. Smith wanted to travel. In response to Ruth Gray, Ms. DeGaglia said she has five acres, and her children each have one acre each. When Ms. Gray asked if the applicant wanted to add anything about the new motor home, Mr. Smith said the family bought it several months ago. The doctors felt travel would be good for his wife. He did not feel it had anything to do with this case.

Phyllis Smith said they have over two acres for their family density exception whereas Ms. DeGaglia only had one acre for each parcel. She did not feel it was right to have only one acre each. Chairman Schreiner said the DeGaglias met the requirements for a family density exception.

MOTION by Carl Ludecke, SECONDED by Darren Eslinger to approve the variance request in BOA#64-06-5.

FOR:**Fox, Jr., Eslinger, Gray, Schreiner, Ludecke****AGAINST:****Bennett****NOT PRESENT:****Wolsmann****MOTION CARRIED: 5-1**

CASE NO.:**BOA#65-06-1****AGENDA NO.:****4****OWNERS/APPLICANTS:****Scott W. and Robbie M. Showalter**

Anita Greiner, Senior Planner, said she had asked that this case be removed from the consent agenda. She showed the aerial and the boundary and location survey on the monitor and submitted the survey as County Exhibit A. She explained that the owners are requesting a variance to the setback requirement to allow an addition to be placed 22 feet from the right-of-way. However, in discussions with Mr. Showalter, he pointed out that she had not measured at a diagonal, where it would only be 18 feet from the right-of-way. All of the advertisements said "less than 25 feet" so she did not feel advertising would be a problem. Even at 18 feet, staff's recommendation would still be for approval. She referred to a letter of support that had been received; no letters of opposition were received. She noted that the request has been changed from 22 feet from the right-of-way to 18 feet.

There was no one in the audience who wished to speak on this case.

MOTION by Ruth Gray, SECONDED by Mary Link Bennett to approve a variance for BOA#65-06-1 to allow a detached garage/storage building to be located 18 feet from the right-of-way of Mark Lane on the side property line.

FOR:**Fox, Jr., Eslinger, Gray, Bennett, Schreiner, Ludecke****AGAINST:****None****NOT PRESENT:****Wolsmann****MOTION CARRIED: 6-0**

CASE NO.: BOA#67-06-5

AGENDA NO.: 6

OWNER: Joseph Albatys
APPLICANT: Cynthia Austad

Anita Greiner, Senior Planner, presented the case and staff recommendation of approval with conditions. She showed the aerial from the staff report on the monitor. The owner is requesting to split the parcel into three ten-acre parcels and one 9.21-acre parcel. She showed the site plan from the staff report on the monitor, noting how the parcel will be split. She also submitted a flood map as County Exhibit A and a wetlands map as County Exhibit B, pointing out the flood zone and wetland areas. She questioned whether there would sufficient uplands on the property so staff has recommended a condition to address that. The surveyor came into the office and explained to her that the parcels could be configured so each parcel would have five acres of uplands and have more than the 50 feet of upland area to get to the back on parcel 2, which has the bulk of the pond on it.

In response to Carl Ludecke, Ms. Greiner said the minimum lot size in this zoning district is five acres. From the aerial, Mr. Ludecke said it looks like there are many five-acre tracts on the other side of the road. Ms. Greiner submitted a map (County Exhibit C) showing the other lots in the area. She noted the letter of opposition and the letter of concern in the staff report. She submitted a map (County Exhibit D) showing the properties of the writers of those two letters.

When Ms. Bennett asked about the third point made in the letter from Ms. Schloesser, Ms. Greiner said those agencies are not required to be notified. Ms. Bennett said there would be no place for the animals to cross. Ms. Greiner said she did not know that to be true. Ms. Bennett said she has been out there, and the animals do cross there. Ms. Greiner said the parcel to the south is 146 acres and the parcel to the east is 262 acres so there is large acreage out there.

Cindy Austad with Florida Ranchland Realty was present to represent Mr. Albatys. She said Mr. Albatys is not able to utilize this property as a 40-acre parcel so he would like to divide it up and sell the parcels as it has not sold as a 40-acre parcel.

Patricia DeKoiyer said she owns 8-3/4 acres directly across the road from the pond. At the request of Ruth Gray, she pointed out on County Exhibit D the location of her 8-3/4 acre property as another five-acre parcel she owns. She did not have a problem with the split, but she requested that mobile homes be prohibited on the parcels as she has a home of over 3,000 square feet. Although their five-acre parcel has an old mobile home on it that came with the property, her intent is to build a small house when she retires. She submitted a letter of opposition from a neighbor as Opposition Exhibit A.

Chairman Schreiner said this Board cannot put a restriction on the type of construction. Melanie Marsh, Deputy County Attorney, added that State Statute does not permit the County to restrict any type of construction in any zoning district. As long as a mobile home meets the County's aesthetic requirements such as roof pitch and size, it would be permitted in any zoning district. Ms. DeKoiyer said her main concern was the devaluation of her property and the lack of proper care of the homes on the proposed parcels. She felt a conventional home may have better upkeep. When Ms. DeKoiyer said she did not want a junky and cluttered area, Darren Eslinger said that is a Code Enforcement issue.

Ms. Greiner read the letter of opposition (Opposition Exhibit A) into the record.

MOTION by Carl Ludecke, SECONDED by Ruth Gray to approve the variance request in BOA#67-06-5 with the following conditions:

The parcels must be configured to allow at least 150 feet of road frontage on Fullerville Road with a minimum of 50 feet of upland area along the access corridor to the bulk of each parcel. Each parcel must have a minimum of five acres of uplands.

CASE NO.: BOA#67-06-5

AGENDA NO.: 6

OWNER: Joseph Albatys
APPLICANT: Cynthia Austad

PAGE NO.: 2

The four parcels being created through the subject minor lot split cannot be split further utilizing the minor lot split process or the family density exception process.

FOR: Fox, Jr., Eslinger, Gray, Schreiner, Ludecke

AGAINST: Bennett

NOT PRESENT: Wolsmann

MOTION CARRIED: 5-1

CASE NO.:

BOA#69-06-2

AGENDA NO.:

8

OWNER/APPLICANT:

First Avenue Construction, LLC

Anita Greiner, Senior Planner, presented the case and staff recommendation of approval. She showed the aerial and site plan from the staff report on the monitor. She noted the letter of opposition in the backup. She said the City of Clermont had asked her to clarify with the owner that Type F rather than Miami curbing should be utilized with the curb and guttering system. If that is done, the City would not be in opposition. In response to Ruth Gray, Ms. Greiner said that Miami curb and guttering on new streets in the area of the Clermont Joint Planning Area (JPA) is prohibited. She submitted a flood zone map as County Exhibit A.

John Nehmatollah of First Avenue Construction stated that on Ridge Avenue and in the proposed development, Type F curbing would be used.

At the request of Ms. Gray, Thomas Christian, nearby property owner, pointed out on the aerial where he lived. He said there have been numerous discussions about this request among his neighbors. This is a very old established neighborhood. There are actually two neighborhoods, Minnehaha Beach and Sunset Ridge, adjacent to one another. The residents of these subdivisions are concerned that there is only one access/egress point into any of these homes, Sunset Avenue, which is a very narrow road. This road is used for approximately 30 homes. The residents questioned the impact of seven more lots on the road. He was unclear as to the purpose of this variance. Because of the nature of these neighborhoods, the lack of sidewalks on Sunset, Lakeview, and Ridge Avenues, and the age of the residents (senior citizens and children), it is the general consensus of the residents that this variance may generate more traffic than what the residents feel would be healthy for the neighborhood. It was his personal recommendation to reject this request as he felt people would be adversely affected by this variance request. Darren Eslinger asked Mr. Christian what could be done to make this better. Mr. Christian replied that the codes are put in place to protect the neighborhoods, the quality of life, and the value of the existing homes. Chairman Schreiner explained that if the owner puts in a 60-foot right-of-way for the road in the subdivision, the seven lots could be developed without a variance. However, the owner is requesting a 50-foot right-of-way. Carl Ludecke explained that regardless of whether this subdivision has a 50-foot or 60-foot right-of-way, the pavement width would still be the same.

Don Evans, property owner across the street at the end of Ridge Avenue, pointed out his property on the aerial. When he asked why Clermont was being contacted, Ms. Greiner explained the JPA with the City of Clermont. He said he did not have a problem with the variance request. When Mr. Evans asked about the common well, Chairman Schreiner said that is not an issue before this Board.

MOTION by Ruth Gray, SECONDED by Mary Link Bennett to approve the variance request in BOA#69-06-2 to reduce the width of the right-of-way to 50 feet for the road in the subdivision.

FOR:

Fox, Jr., Eslinger, Gray, Bennett, Schreiner, Ludecke

AGAINST:

None

NOT PRESENT:

Wolsmann

MOTION CARRIED: 6-0

CASE NO.: BOA#70-06-3

AGENDA NO.: 9

OWNER: Thomas L. Knight
APPLICANT: Steven J. Richey, P.A.

Anita Greiner, Senior Planner, presented the case and staff recommendation of approval with conditions. She showed the aerial and a map with the proposed split from the staff report on the monitor. She submitted a flood zone map as County Exhibit A, noting that there is some flood zone on the parcel. However, construction of the homes will take place out of the flood zone. She also submitted a wetlands map as County Exhibit B, noting the wetlands on the property.

Steve Richey was present to represent the case. If the easement that runs through this property is included, he said the parcel is in excess of 15 acres. Under the Lake County Code, they could get three lots if they paved a road back to South Dewey Robbins Road. If this variance is not granted, that is what they anticipate doing. South Dewey Robbins Road is on the paving list. If that is done, they will put in a short cul-de-sac and create three lots on the 15 acres, five acres each. However, they are asking to create only two lots. The setback requirement for this zoning district is 25 feet. The gentlemen who took this case off the consent agenda was concerned about having more than one house on the property and them being close to his house. He did not have a problem with a condition being placed on this variance that homes must be of conventional construction because that is what they will be requiring. They will limit the lot split to two lots if this variance is granted, as requested.

Edward Benoit was not pleased that there would be two houses only 25 feet from his property line. Ms. Greiner pointed out on the aerial the property belonging to Mr. Benoit. He said he would prefer the parcel being split differently and have one of the houses tucked back into the woods.

Carl Ludecke stated that even if this stayed as one tract, a house, storage buildings or a nursery could be built 25 feet from Mr. Benoit's property line since it is zoned Agriculture. Whether it would be one or two houses would not make much difference in protecting Mr. Benoit. When Chairman Schreiner asked how far the structure on the northeast corner was set back, Mr. Benoit said it was 50 to 75 feet. The dwelling unit is much further back. Mr. Ludecke said the house on parcel 2 would probably be located further back from the property line where there is more width. A house on parcel 1 would probably also be placed further back on the property. That would be the logical settings. Ms. Greiner added that the condition regarding no further splits would keep the parcels larger if the Board approves the variance with conditions. Mr. Benoit withdrew his objection.

Ms. Greiner pointed out on the aerial the location of Arnold Tebowe's property. Mr. Tebowe asked what work might be done to maintain that right-of-way. Currently it is a sandy road. The right-of-way ends at his property. Chairman Schreiner said the lot split would only be for two lots. He noted that one of the conditions recommended by staff addressed maintenance of the easement on the subject property.

MOTION by Mary Link Bennett, SECONDED by Ruth Gray to approve the variance request in BOA#70-06-3 with the following conditions:

- 1. The two parcels being created through the subject minor lot split cannot be split further utilizing the minor lot split process or the family density exception process.**
- 2. The owner must submit recorded deed restrictions, which require the property owner and subsequent owner(s) to maintain the existing easement that will be used to access the parcel to the east. Such restrictions must be recorded prior to the recordation of the approved minor lot split.**

BOARD OF ADJUSTMENT

JUNE 8, 2006

CASE NO.: BOA#70-06-3 **AGENDA NO.:** 9

OWNER: Thomas L. Knight **PAGE NO.:** 2
APPLICANT: Steven J. Richey, P.A.

FOR: Fox, Jr., Eslinger, Gray, Bennett, Schreiner, Ludecke

AGAINST: None

NOT PRESENT: Wolsmann

MOTION CARRIED: 6-0

Discussion

Chairman Schreiner reminded the Board of the special hearing being held on June 9 in the BCC Chambers at 1 p.m. Ms. Greiner asked the Board to bring the packages mailed to them. There will be no extra copies available.

Adjournment

There being no further business, the meeting was adjourned at 2:34 p.m.

Respectfully submitted,

Sherie Ross
Public Hearing Coordinator

Donald Schreiner
Chairman

This meeting was recorded by and notes taken by Anna Ely, Public Hearing Coordinator, and transcribed by Sherie Ross, Public Hearing Coordinator.